IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

CUSTOMS APPEAL NO.45 OF 2006

The Commissioner of Customs, Mumbai .. Appellant
V/s
M/s.Diastar Jewellery Ltd. & Ors. .. Respondents

Mr.A.M.Sethna for the Appellant.
Ms.Kiran Doiphode for the Respondents.

CORAM : DR.S.RADHAKRISHNAN &
J.P.DEVADHAR, JJ.

DATE : 17th January, 2007.

P.C.:

1. Heard the learned Counsel for the parties. Perused the order of the CESTAT dated 26.10.2005. Appeal is admitted on the following substantial question of law:-

> "Whether the CESTAT was right in remading the matter back without giving a finding regarding the shortage of Gold and confiscation of diamond without considering the confessional statement of the Managing Director of the Petitioner Mr.P.K.Jain made under Section 108 of the Customs Act."

2. The learned Counsel for the Respondents raised the preliminary objection that the dispute pertains to valuation and as such this Court ought not to entertain the present Appeal. However, after reading the order of the Tribunal we have reframed the aforesaid question of law, and admittedly there is no finding on the above issue. The Tribunal could not have remanded the matter without giving finding on the aforsaid issue.

3. In view of the above, we set aside the impugned

order dated 26th October, 2005 passed by the CESTAT and remand back the matter to the CESTAT to give a finding on the aforesaid question of law and pass an appropriate order.

4. Writ Petition stands disposed of accordingly.

(J.P.DEVADHAR, J.) **(DR.S.RADHAKRISHNAN,J.)**